IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7432 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUBEN MAGANBHAI NARANBHAI PATEL (THRO.HUSBAND)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7432 of 2004

MR UTPAL M PANCHAL for Petitioner No. 1

MS HB PUNANI ASST GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/12/2004

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP for the other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 2.6.2004 passed by the Police Commissioner, Surat city under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. While exercising the powers under sub-section (2) of Section-3, the detaining authority and Police Commissioner of city Surat has considered the fact of registration of ten different offences in the same area of city Surat within span of approximately 17 months. On all occasions, the police has prosecuted the petitioner lady detenu for dealing with country made liquor. It is recorded by the detaining authority that this bootlegging activity is dangerous to the public health and public order. On last occasion, that is on the day of offence alleged to have committed on 11th March, 2004, the Police found that she is involved in the offence concerning 150 liters of country liquor. Frequency of the offences in the area of operation of bootlegging activities, it prima facie, appears that cogent material was available with the detaining authority for exercising the jurisdiction vested in the agency above under sub-section (2) of Section-3 of the PASA Act. Along with all documents pertaining to ten cases, the sponsoring authority had provided statements of two witnesses to the detaining authority and these statements were verified by the detaining authority on 31.5.2004. Both these witnesses have described the activity of the petitioner and the tactics she was adopting in carrying out her activities. The first witness has narrated incident of 2.5.2004 and the second one has described the details of the events occurred on 7.5.2004. These statements have been recorded on 12.5.2004 and 14.5.2004 respectively. In this background of set of facts, this Court is of the opinion that the subjective satisfaction recorded by the detaining authority is in no way erroneous. On the contrary, it is clear application of mind in exercising the jurisdiction and the authority was just while exercising the privilege under sub-section (2) of Section-9 of the Act in the present case. So, the Court is not satisfied and agreed with submission of Ms.Patel that registration of ten cases can be said to have been prejudicial to maintenance

of law and order and not public order. It is true that plain reading of the statements gives an impression that narration of the incidents by two witnesses are drawing a dramatic picture but the same if considered in the background of the fact of registration of ten offences in small span of 17 months, it will be difficult for the Court to record that these statements had placed in mechanical manner and only with a view to create a case by sponsoring authority and for preparation of an order of preventive detention against the present petitioner from the detaining authority.

#. The order of preventive detention is assailed on various grounds and the legality of the detention is also assailed by Ms.Patel. She has raised two other alternative contentions. The first contention raised by her is that the order of detention even in such or similar cases must be passed promptly and in the present case, though the statements of two witnesses were available to the sponsoring authority on 12.5.2004 or latest by 17.5.2004, they were not placed before the detaining authority till 31.5.2004. She has rightly argued that there was no need to wait for the sponsoring authority till it was able to record the statement of second witness on 18.5.2004. The time gap, therefore, between the date of recording of the statements of first witness and verification is considered then, there is delay of about 18 to 19 days. This delay, so cause, has not been satisfactorily explained either by the sponsoring authority or in the reply affidavit available on record. So, atleast, further detention should be quashed and set aside.

#. She has also pointed out the decision of this Court in case of CHHANIYO @ AMRUT RAGHUBHAI PATEL V. THE COMMISSIONER OF POLICE, SURAT. On perusal of the cited decision, in my opinion, the same would also help the present petitioner because the present petitioner was not given enough opportunity to make effective representation and therefore, it should be held that privilege flowing from Article 22(5) of the Constitution has been seriously infringed. It will be beneficial and convenient for the Court to refer the relevant observations of the cited decision, which reads as under, where this Court has said;

"In course of hearing, one of the grounds raised is non supply of demanded vital documents like reports of Forensic Science Laboratory in all the cases relied on by the detaining authority despite specific demand made in the

representation dated 23.12.2002. A specific plea is raised that FSL reports, though specifically demanded, have not been furnished to the detenu. However, the same has not been adverted to in the affidavit in reply. It is, therefore, apparent that non supply of such vital documents is prejudicially affecting the right of making effective representation under Article 22(5) of the Constitution. Once such an important right is infringed, there is non compliance of the requirement of Article 22(5) of the Constitution of India. Similar view is taken by this Court in following two decisions :

1. Ramesh B.Thakore v. State, 2000 (2) GLR 1777.
2. Koli B. Parmar v. District Magistrate, Bhavnagar, 2000 (2) GLH 540. "

#. Undisputedly, in the present case the petitioner had requested the competent authority to supply a copy of the FSL report but in two cases, such reports were not supplied to the detenu. Even for the sake of argument, it is accepted that the authority has attempted to give response to the demand at the earliest, even then, non supply of these documents in a reasonable period of time would seriously prejudice the rights of the present petitioner - detenu to make an effective representation. FSL Report being vital document to make such representation. Of course, the detaining authority in reply affidavit has tried to explain this contingency. Merely because of the particular document was not either referred to or relied upon by the authority, cannot refuse to supply such document, especially, when document is not found irrelevant. On the contrary, contents of para-9 of the reply affidavit reveals that FSL report in respect of eight offences registered against the petitioner were supplied to the petitioner detenu and in two cases, they were not supplied by saying that these reports have not been relied on for recording subjective satisfaction. But non supply of such document if becomes a hurdle in making effective representation, atleast, subsequent detention should not be held to be valid because it would seriously prejudice the valuable right flowing from Article 22 of the Constitution of India. So, Court finds that any further detention of the petitioner is not sustainable and therefore, petition shall have to be allowed.

#. The petition succeeds and the same is allowed. The

order of detention dated 2.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu NIRUBEN MAGANBHAI NARANBHAI PATEL who has been detained at Central Jail at Baroda be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :20/12/2004 [C.K.Buch, J.]

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